

Appln No. 10/723,817  
Amdt date August 6, 2008  
Reply to Office action of May 6, 2008

### **REMARKS/ARGUMENTS**

The above identified patent application has been amended and reconsideration and reexamination are hereby requested.

Claims 1-20, 24 and 25 are now in the application. Claims 21-23 were previously cancelled. Claims 1-20 and 24, 25 have been amended.

The Examiner objected to claims 18-20 because of various informalities. Such informalities have now been addressed by the Applicant.

The Examiner has rejected claims 1-13, 18-20, 24 and 25 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. The Applicant has amended claims 1 and 10 to indicate that the deck having a plurality of sockets is positively claimed, and the Applicant has amended claim 18 to indicate that the gate comprising a pair of spaced upright members is positively claimed.

As such, all of the claims particularly point out and distinctly claim the subject matter that the Applicant regards as the invention.

The Examiner has rejected claims 18-20 under 35 U.S.C. §102(a) as being allegedly anticipated by Applicant's admitted prior art (APA). The Examiner has also rejected claim 25 under 35 U.S.C. §103(a) as being obvious over APA in view of Palamarz.

The Applicant's amended claim 18 calls for, in part (underlining added for emphasis): "A gate and a pair of gate poles . . . the gate comprising a frame and a pair of spaced upright support members, wherein each of the pair of gate poles is attached to one of the pair of spaced upright support members to allow the gate to be free to open and close without interference from the tension of the removable swimming pool fence."

In rejecting claim 18, the Examiner noted that "the use of the claimed pair of poles with a gate has only been recited as intended use within claim 18; neither a gate nor spaced upright support members have been positively claimed as elements of the claimed pair of poles." *Office action*, p. 2. Claim 18 has been amended to indicate that a gate and spaced upright support

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members have been positively claimed. Further, APA does not teach either a gate comprising a frame and a pair of spaced upright support members nor a pair of gate poles attached to one of the pair of spaced upright support members to allow the gate to be free to open and close without interference from the tension of the removable swimming pool fence.

Accordingly, claim 18 is not anticipated by APA under 35 U.S.C. §102(a).

Claims 19, 20, and 25 are dependent on claim 18. As such, these claims are believed allowable based on claim 18 for at least the reasons above and for the additional limitations they contain.

The Examiner has rejected claims 1-8, 10-12 and 14-26 under 35 U.S.C. §103(a) as being obvious over Sadinsky et al. (U.S. 5,664,769) in view of APA.

Claim 1 calls for, in part (underlining added for emphasis): "support means capable of withstanding lateral tension forces of the mesh screen for supporting and latching the gate, the support means comprising at least a first gate pole of the plurality of poles attached to one of the pair of spaced upright support members on one side of the gate opening and a second gate pole of the plurality of poles attached to the other of the pair of spaced upright support members on another side of the gate opening."

Claim 10 calls for, in part (underlining added for emphasis): "support means comprising at least one gate pole of the plurality of poles on each opposite side of the gate opening attached to one of the pair of spaced upright support members."

Claim 14 calls for, in part (underlining added for emphasis): "fabricating a gate including a pair of side rails, each side rail of the pair of side rails attached to one of the pair of gate poles of the plurality of poles."

With respect to claims 1 and 10, the Examiner asserts that "it would have been obvious . . . to modify the fence and gate disclosed by Sadinsky et al. wherein each of the plurality of poles includes a plastic insert contained within each pole and a metal pin that is fixedly attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking."

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With respect to claim 14, the Examiner asserts that " it would have been obvious . . . to modify the method disclosed by Sadinsky et al. wherein each of the plurality of poles includes a plastic insert contained within each pole and a metal pin that is fixedly attached to each insert as taught by Applicant's admitted prior art in order to enable one to use less noticeable, smaller diameter holes in the pool decking."

The Examiner does not provide specific reasons for rejecting claim 18 under 35 U.S.C. §103(a). However, claim 18 is patentable over Sadinsky in view of APA for the reasons provided below.

The APA discloses that "smaller diameter pins were mounted at the lower end of a fence pole such that smaller holes, capable of receiving the smaller diameter pins, could be placed in the pool decking," as noted by the Examiner. However, Applicant reiterates that the APA also discloses that "[s]uch [smaller diameter] pins have not been used at the gate structure for pool fences because of a perceived need to provide a more stable, rigid structure at and near the gate." Applicant further submits a declaration from the inventor that indicates that the perception of a more stable, rigid structure at or near the gate "was created by the instability and breakage of poles with pins used in the fence not near the gate, such poles being subject to less tension than poles near the gate. Accordingly, in previous pool fence designs, for poles at or near the gate, the poles themselves were inserted into holes in the pool deck, the poles having a wider diameter and no pins to provide increased stability." *Declaration of Steven E. Sadinsky [Sadinsky Decl.]*, ¶5. The declaration further indicates that "due to the perceived need for additional stability, it would have been counterintuitive to provide a smaller diameter pin at or near the gate. As such, in my opinion, it would not have been obvious to one of ordinary skill in the art at the time the invention was made to provide fence poles with smaller diameter pins mounted to a lower end of each pole at or near a gate for the fence." *Sadinsky Decl.*, ¶6. Accordingly, APA does not teach support means for supporting the gate comprising poles including a pin attached to an insert, the poles attached to spaced upright support members on two sides of a gate.

All of the limitations as claimed in claims 1, 10, 14 and 18 are neither present in APA or Sadinsky, nor are an obvious result from a reasonable combination of their teachings.

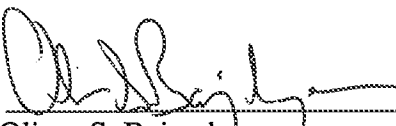
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Accordingly, the inventions claimed in claims 1, 10, 14 and 18 are patentable over Sadinsky in view of APA.

Claims 2-9, 11-13, 15-17, 19, 20, 24 and 25 are dependent on claims 1, 10, 14 or 18. As such, these claims are allowable based on claims 1, 10, 14 or 18 for at least the reasons above and for the additional limitations they contain.

In view of the above amendment and remarks, the claims are patentably distinct over the prior art of record and that all of the rejections to the claims have been overcome. As such, allowance of the above Application is requested.

Respectfully submitted,  
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